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IN THE

Supreme Court of the United States

October Term, 1962

No. 334

VITO F. LANZA and CHARLES F. RANK,
Petitioners,

against

ROBERT F. WAGNER as Mayor of the City of New York and LOUIS J. LEFKOWITZ, Attorney General of the State of New York,
Respondents.

PETITIONERS' REPLY

Petitioners respectfully request filing of this Reply to the briefs filed on behalf of both respondents.

As to Whether Federal Questions Raised are Moot

The term of petitioner Rank was not set to expire until 1964, and the mere circumstance that the term of petitioner Lanza was set to expire in 1962, does not render the Federal questions raised moot.

All Federal Questions were Raised in Courts below

The Federal questions raised are these:

(A) Whether the New York State Statute violates Article 1, § 10 of the Constitution of the United States, insofar as said Article provides that no State shall pass any Bill of Attainder.

(B) Whether said New York State Statute violates Article 4 of the Constitution of the United States, insofar as said Article provides that the United States shall guarantee to every State a Republican Form of Government.

(C) Whether said New York State Statute violates Amendment XIV, § 1, of the Constitution of the United States, insofar as said Amendment provides that no State shall deprive any person of life, liberty or property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

Respondents concede that questions (A) and (C) were properly raised in the Courts below. Respondents erroneously contend that question (B) was not raised in the Courts below.

The simple fact is that all three opinions in the Court of Appeals treat with the question (B)—that is whether the legislation constituted a valid or invalid delegation of power to "private" persons, in "private" associations.

The question as to whether the legislation was valid or invalid, because of the delegation of the power to appoint to public office, to "private" persons is a broad question. Whether the power to appoint to public office, is in the nature of an executive function, as claimed by respondents, rather than in the nature of a legislative function is beside the point.

In a Republic the power which the people have vested in either the executive, the judiciary or the legislature, may not be delegated to "private" persons, who happen to be officers of "private" organizations.

This is the broad Federal question presented, and obviously the Court of Appeals of the State of New York, treated with the broad question of whether in a Republic, the legislature may delegate its functions, rather than the narrow question as to whether that may be done under a specific provision of the New York State Constitution.

The majority opinion in the Court of Appeals, cites 22 cases, all from other jurisdictions; as to this phase of the case, in support of the conclusion reached that the legislation was valid. Obviously these 22 cases from jurisdictions other than New York State, could have considerable bearing on the broad question as to whether in a Republic, there may be delegation to appoint to public office, to "private" persons, but very little bearing on the narrow question as to whether the legislation was valid under a specific provision of the New York State Constitution.

In short, petitioners contend that in a Republic, the power to appoint to public office, whether an executive function, or a judicial function, or a legislative function, or perhaps a "mixture" of such functions, may not be delegated to "private" persons, who happen to be officers of "private" organizations. Petitioners raised this contention, in all of the Courts below.

CONCLUSION

Petitioners respectfully pray that a Writ of Certiorari issue, as requested in their petition, and for such other relief as is appropriate.

Respectfully submitted,

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SAMUEL SHAPIRO,
of Counsel.